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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,537	09/23/2003	Don Warburton	14374.106	2130

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EXAMINER
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XU, LING X

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/668,537	WARBURTON, DON	
	Examiner	Art Unit	
	Ling X. Xu	1775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2/21/2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The specification stands objected because the use of the trademarks “HPC/H02” and “HPC/H05” has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Applicant fail to provide proper identification of the product sold under a trademark

Accordingly to MPEP 608.01 (v) [R-2], names used in trade are permissible in patent applications if:

(A) Their meanings are established by an accompanying definition which is sufficiently precise and definite to be made a part of a claim, or

(B) In this country, their meanings are well-known and satisfactorily defined in the literature.

Condition (A) or (B) must be met at the time of filing of the complete application.

In the present application, the trademark used has no fixed and definite meaning as required in the condition (A) or (B), accordingly, identification by scientific or other explanatory language is necessary. *In re Gebauer-Fuelnegg*, 121F.2d 505, 50 USPQ 125 (CCPA 1941).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 1-36 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claimed emissive coating which substantially comprising an inorganically bonded ceramic was not described sufficiently in the specification to enable one skilled in the art to make and use the invention.

The only example of the coating material is referred to trade names on paragraphs [0054]-[0055], was the trademark or tradename "HPC/H02" and "HPC/H05", which was not defined in the specification. Accordingly, identification by scientific or other explanatory language is necessary in order to enable one skilled in the art to make and/or use the invention.

If proper identification of the product sold under a trademark, or a product referred to only by a name used in trade, is omitted from the specification and such identification is deemed necessary under the principles set forth above, the examiner should hold the disclosure insufficient and reject on the ground of insufficient disclosure any claims based on the identification of the product merely by trademark or by the name used in trade. See MPEP 608.01 (v) [R-2].

***Claim Rejections - 35 USC § 102/103***

3. Claims 1-2, 4-15 and 17-19 stand rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McManus (US 3,400,882) for the reasons of record set forth in the Office action dated 2/4/2005.

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4. Claims 1-2 and 4-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bliesner (6,329,098) for the reasons of record set forth in the Office action dated 2/4/2005.

5. Claims 3, 16 and 20-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McManus, as applied to claims 1-2, 4-15 and 17-19 above, and further in view of Tormey et al. (US 5,725,808) for the reasons of record set forth in the Office action dated 2/4/2005.

6. Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bliesner, as applied to claims 1-2 above, and further in view of Tormey et al. (US 5,725,808) for the reasons of record set forth in the Office action dated 2/4/2005.

### ***Response to Arguments***

7. Applicant's arguments filed 7/18/2005 have been fully considered but they are not persuasive.

Regarding the objection of the use of trademarks in the specification, applicant arguments are addressed in part in the objection as set forth in this office action. In addition, accordingly MPEP 608.01 (v) [R-2], the relationship between a trademark and the product it identifies is sometimes indefinite, uncertain, and arbitrary. The formula or characteristics of the product may change from time to time and yet it may continue to be sold under the same trademark. In patent specifications, every element or ingredient of the product should be set forth in positive, exact, intelligible language, so that there will be no uncertainty as to what is meant. Arbitrary

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trademarks which are liable to mean different things at the pleasure of manufacturers do not constitute such language. *Ex Parte Kattwinkle*, 12 USPQ 11 (Bd.App. 1931). If a trademark or a tradename has no fixed and definite meaning which can be determined and it involves some physical or chemical characteristic of the invention, then identification by scientific or other explanatory language is necessary. *In re Gebauer-Fuelnegg*, 121 F.2d 505, 50 USPQ 125 (CCPA 1941). See MPEP 608.01(v).

Regarding the rejection under 35 USC 112, first Paragraph, applicant argues that applicant has provided ample disclosure in the application to enable one of skilled in the art and provided a list of the properties, characteristics and feature of the claimed coating.

However, the list provided by the applicant still fails to name or identify the coating materials using the trademark “HPC/H02” and “HPC/H05.” According to MPEP 608.01 (v) [R-2], if proper identification of the product sold under a trademark, or a product referred to only by a name used in trade, is omitted from the specification and such identification is deemed necessary under the principles set forth above, the examiner should hold the disclosure insufficient and reject on the ground of insufficient disclosure any claims based on the identification of the product merely by trademark or by the name used in trade.

The emissive coating is a essential element in the claimed component. The only example of the coating material is referred to trade names on paragraphs [0054]-[0055], was the trademark or tradename “HPC/H02” and “HPC/H05”. Accordingly, identification of the product under the trademark or tradename is necessary to enable one skilled in the art to make and use the invention.

With respect to the rejections based on the prior arts cited in the prior Office action, Applicant's arguments can be summarized as that the prior arts alone and in combination do not teach the coating substantially comprising an inorganically bonded ceramic.

As stated in the prior Office action, both cited references, McManus and Bliesner, disclose the use of ceramic coating. It is well known in the art that ceramic comprises inorganic materials. The term "ceramic" is defined in Hawley's Condensed Chemical Dictionary, 13<sup>th</sup> Edition, p 231, as "a product, in which silicon and its oxide and complex compound known as silicates occupy a predominant position." Since ceramic comprises inorganic materials, ceramic is considered to be inorganically bonded ceramic. Accordingly, the Examiner maintains that the ceramic coatings disclosed in the prior arts are considered to be an inorganically bonded ceramics.

It should be noted that the claims do not limit the inorganically bonded ceramic to be any specific type of ceramics, accordingly, any type of ceramics, which comprising inorganic compounds can be used as the emissive coating.

### ***Conclusion***

8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114.

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See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

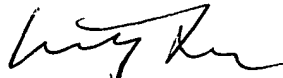
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ling X. Xu whose telephone number is 571-272-1546. The examiner can normally be reached on 8:00 - 4:30 Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer C. McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ling X. Xu  
Primary Examiner  
Art Unit 1775